

October 29, 2004

VIA ELECTRONIC MAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: WT Docket No. 99-87

Dear Ms. Dortch:

Monongahela Communications LLC (“MCL”), by its counsel and in cooperation with the undersigned equipment vendors and technology companies, hereby submits this letter in support of (1) the Petition for Reconsideration of the *Second Report and Order*¹ filed by the American Association of Paging Carriers, *et al.* (“AAPC Petition”),² and (2) the Petition to Defer Enforcement of Section 90.203(j)(5) filed by EFJohnson Company, *et al.* (“EFJohnson Petition”) in the above-referenced proceeding.³ Pending resolution of the AAPC and EF Johnson Petitions, however, the Commission can and should also stay enforcement of Section 90.203(j)(4), which, beginning January 1, 2005, prohibits certification of any single-mode or dual-mode PMLRS or paging equipment capable of operating at one voice path per 25 kHz of spectrum, *i.e.*, equipment that includes a 25 kHz mode. Deferring enforcement of both Section 90.203(j)(4) and Section

¹ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, 18 FCC Rcd 3034 (2003).

² Petition for Reconsideration of Second Report and Order filed by American Association of Paging Carriers *et al.*, WT Docket No. 99-87 (filed Aug. 18, 2003).

³ Petition To Defer Enforcement of Section 90.203(j)(5) of the Commission’s Rules filed by EF Johnson Company *et al.*, WT Docket No. 99-87 (filed July 14, 2004).

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90.203(j)(5) will ensure consistent application of the Commission's narrowbanding deadlines in this proceeding, and will permit vendors to continue investing in and developing new 25 kHz paging products without the cloud of regulatory uncertainty created by the *Second Report and Order* and the January 1 cut-off date.

As discussed in the AAPC Petition, there is ample evidence throughout this proceeding that the Commission has never intended to apply its narrowbanding requirements to paging equipment.⁴ Inexplicably (but perhaps unintentionally), the *Second Report and Order* reverses field and applies the Commission's narrowbanding requirements to both PMLRS and paging equipment, with no prior indication that the Commission intended to do so:

Nowhere in the Commission's discussion in the FNPRM did it ever suggest that it was also revisiting its previous determination to entirely exempt paging-only frequencies from the narrowbanding program. Further, this issue was never addressed in the record in response to the FNPRM. Similarly, in its Initial Regulatory Flexibility Analysis (the "IRFA") for the FNPRM pursuant to the Regulatory Flexibility Act, 4 U.S.C. § 601, *et seq.*, the Commission's discussion, in relevant part, addressed only "non-public safety private land mobile radio ("PMLR") licensees in the bands between 222 MHz and 896 MHz" and did not mention CMRS paging licensees under Part 90 at all.⁵

Also, the AAPC Petition correctly points out that application of the Commission's narrowbanding regime to Part 90 paging-only frequencies is unnecessary and will do far more harm than good by requiring paging licensees to migrate to narrowband equipment at enormous financial cost, with no corresponding benefit to their customers.⁶ Those considerations militate strongly in favor of deferring any application of the Commission's narrowbanding requirements to paging equipment (including those in Section 90.203(j)(4)) pending resolution of the AAPC Petition. Indeed, similar considerations already have prompted the Commission to stay enforcement of its January 17, 2004 deadline for Part 90 applications for wideband channels in the 150-174 MHz or 421-512 MHz bands pending resolutions of petitions for reconsideration of the *Second Report and Order* filed by various PMLRS interests.⁷ MCL is merely asking that the Commission extend the same treatment to the paging industry pending resolution of the AAPC Petition.

⁴ See AAPC Petition at 2-5.

⁵ *Id.* at 5 (footnotes omitted).

⁶ *Id.* at 6-8.

⁷ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, 18 FCC Rcd 25491(2003).

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The case for staying enforcement of Section 90.203(j)(4) becomes especially compelling if the Commission grants the EFJohnson Petition and stays enforcement of Section 90.203(j)(5). Section 90.203(j)(4) prohibits certification of 25 kHz equipment as of January 1, 2005; Section 90.203(j)(5) requires applications for equipment certification in the 150-174 MHz and 421-512 MHz bands to specify 6.25 kHz capability beginning January 1, 2005. Obviously, since both rules were adopted to stop certification of 25 kHz equipment beginning January 1, 2005, it would make no sense to stay one rule and not the other.

Finally, absent a stay of any enforcement of Section 90.203(j)(4), MCL and others who are developing 25 kHz paging equipment may lose their opportunity to obtain certification after January 1, 2005 even if the Commission ultimately grants the AAPC Petition. In other words, so long as Section 90.203(j)(4) remains in effect and the AAPC Petition remains unresolved, MCL and others will be forced into the Hobson's choice of (1) compromising their product development at additional cost solely to comply with the January 1 deadline or (2) disregarding the January 1 deadline and thereby risk losing the opportunity to obtain certification if the AAPC Petition is ultimately denied. There is no sensible public interest rationale to expose the paging industry to this sort of regulatory limbo, particularly since it will only forestall introduction of new and innovative paging products to the market with no countervailing benefit to consumers.

Accordingly, for the reasons set forth above, MCL requests that the Commission stay any enforcement of Section 90.203(j)(4) pending resolution of the AAPC and EFJohnson Petitions.

Very truly yours,

/s/ Robert D. Primosch

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cc: Scot Stone, Esq.